

**To:** CN=Karen Schwinn/OU=R9/O=USEPA/C=US@EPA[]  
**Cc:** CN=Bruce Herbold/OU=R9/O=USEPA/C=US@EPA;CN=Erin  
Foresman/OU=R9/O=USEPA/C=US@EPA;CN=Sam  
Ziegler/OU=R9/O=USEPA/C=US@EPA;CN=Tom Hagler/OU=R9/O=USEPA/C=US@EPA[];  
N=Erin Foresman/OU=R9/O=USEPA/C=US@EPA;CN=Sam  
Ziegler/OU=R9/O=USEPA/C=US@EPA;CN=Tom Hagler/OU=R9/O=USEPA/C=US@EPA[];  
N=Sam Ziegler/OU=R9/O=USEPA/C=US@EPA;CN=Tom  
Hagler/OU=R9/O=USEPA/C=US@EPA[]; N=Tom Hagler/OU=R9/O=USEPA/C=US@EPA[]  
**From:** CN=Carolyn Yale/OU=R9/O=USEPA/C=US  
**Sent:** Sat 11/21/2009 4:21:44 PM  
**Subject:** Re: Fw: Attached are the Draft Basic and Draft Overall Purposes for section 404 for  
the Bay Delta Conservation Plan as submitted by DWR.  
[yale.carolyn@epa.gov](mailto:yale.carolyn@epa.gov)

Karen,

If by MN's approach you mean the process for discussions within/across agencies, I'd wholly support. And he's aware of our interest and would like support: he wants to be sure that EPA is involved.

What we do need to sort out is definition of project purpose and need for NEPA/CEQA compliance. We don't know if this purpose statement is the first half of a PandN statement that will also serve for 404.

If we're in the NEPA purpose/need arena, I'm not on board with Mike's first cut (and, I believe, he meant it only as that... is quite open to further discussion). Bruce and I had a wide-ranging discussion of the underlying issues (need) and related proposal purposes ... including the importance of reframing 'reliability' so that it encompasses potential threats to ability to provide useable water from the Delta [part of need], and in that context, the design and management responses. And pushing for high quantities of export water doesn't necessarily make for reliability: If certainty is premium, perhaps a lower quantity could be 'assured' and reliable; a higher tier, only if and when available.

Final thought: the way in which this is unfolding seems more like a State/DWR version of CEQA (eg start with a proposed project and embellish, modify from that basis) than NEPA, which is likelier to construct a range of alternatives around P and N.

C

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-----Karen Schwinn/R9/USEPA/US wrote: -----

To: Carolyn Yale/R9/USEPA/US@EPA  
From: Karen Schwinn/R9/USEPA/US  
Date: 11/20/2009 09:24AM  
cc: Bruce Herbold/R9/USEPA/US@EPA, Erin Foresman/R9/USEPA/US@EPA, Sam  
Ziegler/R9/USEPA/US@EPA, Tom Hagler/R9/USEPA/US@EPA  
Subject: Re: Fw: Attached are the Draft Basic and Draft Overall Purposes for section 404 for the Bay Delta  
Conservation Plan as submitted by DWR.

I have not spoken to the Corps on this recently. I was hoping this discussion could wait for Erin's return but sounds like not. Do you see a problem with MN's approach, Carolyn?

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Carolyn Yale---11/20/2009 09:00:54 AM---A heads up from Mike Nepstad. (Have we had recent discussion with the COE and/or BDCP folks on Sec

From: Carolyn Yale/R9/USEPA/US  
To: Karen Schwinn/R9/USEPA/US@EPA, Tom Hagler/R9/USEPA/US@EPA, Bruce Herbold/R9/USEPA/US@EPA  
Cc: Erin Foresman/R9/USEPA/US@EPA, Sam Ziegler/R9/USEPA/US@EPA  
Date: 11/20/2009 09:00 AM  
Subject: Fw: Attached are the Draft Basic and Draft Overall Purposes for section 404 for the Bay Delta Conservation Plan as submitted by DWR.

A heads up from Mike Nepstad. (Have we had recent discussion with the COE and/or BDCP folks on Section 404?)

Will check in with Karen re follow up. (I'd say we need a preliminary talk with COE to iron out understanding re reframing purpose statement. )

C

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----- Forwarded by Carolyn Yale/R9/USEPA/US on 11/20/2009 08:39 AM -----

From: "Nepstad, Michael G SPK" <Michael.G.Nepstad@usace.army.mil>  
To: "Clay, Lisa H SPK" <Lisa.H.Clay@usace.army.mil>, Carolyn Yale/R9/USEPA/US@EPA, Erin Foresman/R9/USEPA/US@EPA  
Date: 11/20/2009 08:23 AM  
Subject: Attached are the Draft Basic and Draft Overall Purposes for section 404 for the Bay Delta Conservation

Plan as submitted by DWR.

<<BDCP\_Draft\_Purpose\_Statement\_10-23-09.doc>>

Attached are the Draft Basic and Draft Overall Purposes for section 404 for the Bay Delta Conservation Plan as submitted by DWR.

I disagree with their Purposes. I think they are attempting to so narrowly define their project as to preclude looking at any alternatives other than a new canal.

I believe the Basic Purposes of the BDCP is:

- 1) Surface water supply
- 2) Establish fishery habitat

I believe the Overall Purposes of the BDCP is:

- 1) Provide a surface water supply to the South of Delta Water Users which are part of the BDCP
- 2) Establish Bay Delta fishery habitat to offset the impacts of the historic operations of the CVP and SWP

What we don't have is a description of who will get the water and the Needs of the project; How Much Water (and when and at what quality) and How Much Fishery Habitat (and what specifically is fishery habitat in this project).

What do you all think?

If you're all in agreement with what I have here than the next step would be for us all to meet with DWR and Reclamation and NMFS and USFWS (the state and federal Lead Agencies) at a single meeting and inform them of our determination so they all hear it at once and we all are available to answer any questions they may have.

And obviously, if we're not in agreement then we'll work this out among ourselves before we meet with DWR and Reclamation and NMFS and USFWS

Carolyn and Erin, If there are others at EPA who should weigh in on this please get their input on this.

Thanks, Mike (See attached file: BDCP\_Draft\_Purpose\_Statement\_10-23-09.doc)

[attachment "BDCP\_Draft\_Purpose\_Statement\_10-23-09.doc" removed by Carolyn Yale/R9/USEPA/US]